



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 21, 1994

Mr. Gary W. Smith
City Attorney
City of Greenville
P.O. Box 1049
Greenville, Texas 75403-1049

OR94-732

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 27027.

The city of Greenville (the "city") received two requests for various information found in two city employees' personnel files. Along with the requested documents, you have sent the form filed by one of the employees indicating his intention to have his home address and telephone number withheld from public access. You correctly excised that information because he indicated his intent prior to the date this request was made. For the other employee, you state that he has filed the same form, but do not indicate the date that form was submitted to the city. If he filed it prior to the date of the request for his records, you must excise his home address and telephone number before releasing the remainder of his application. See Open Records Decision No. 530 (1989) at 5.

You also excised the employees' social security numbers under the belief that section 405(c)(2)(C)(vii)(I), title 42, of the United States Code prohibits their release. That section makes confidential social security numbers "that are obtained or maintained . . . pursuant to any provision of law, enacted on or after October 1, 1990." *Id.* As was indicated in Open Records Decision No. 622 (1994), governmental bodies must determine under what authority they obtained particular social security numbers and the effective date of those laws. You identify sections 3402(f)(2)(A) and 6109 of the Internal Revenue Code as the provisions under which the city obtained the employees' social security numbers. Section 3402(f)(2)(A) was enacted in the Internal Revenue Code

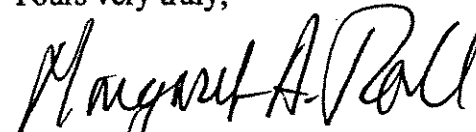
of 1954 with the identical citation and language that it has today. Act of August 16, 1954, Pub. L. No. 83-591, 1954 U.S.C.C.A.N. (83 Stat.) 848. Section 6109 was originally enacted in 1961. *See* Act of October 6, 1961, Pub. L. No. 87-397. You also assert, without identifying any specific provision, that the city is required to obtain such information to comply with the Immigration Reform and Control Act of 1986. As indicated by its popular title, that act was adopted in 1986. Act of November 6, 1986, Pub. L. No. 99-603 100 Stat. 3359. In regard to the confidentiality of social security numbers, the germane issue under section 405(c)(2)(C)(vii)(I), title 42, is the time those statutes were enacted. Because the statutes under which the city obtained the employees' social security numbers were enacted prior to October 1, 1990, section 405(c)(2)(C)(vii)(I), title 42, does not make the numbers confidential.

You claim that a city employee's employment history is confidential under section 552.102 of the Open Records Act. Section 552.102 protects from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." This office concluded in Open Records Decision No. 277 (1981) that an employee's "employment experience" is subject to disclosure.

In regard to the enclosed letter of complaint from Ms. Barbara Garrett, we remind you that she is correct when she states that the Open Records Act, specifically section 552.222 (formerly section 5(b), article 6252-17a, V.T.C.S.), prohibits an officer for public records, or his agent, from making any inquiries of a person who applies for inspection of public records, other than "to establish proper identification and the public records requested." Gov't Code § 552.222; *see* Open Records Decision No. 542 at 4 (1990).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Margaret A. Roll". The signature is fluid and cursive, with the first name "Margaret" being more prominent.

Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/PIR/rho

Ref.: ID# 27027

Enclosures: Copy of complaint
Submitted documents

cc: Ms. Barbara P. Garrett
P.O. Box 1787
Greenville, Texas 75403
(w/o enclosures)